

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: EAST PALESTINE TRAIN)	Case No. 4:23-cv-00242-BYP
DERAILMENT)	
)	JUDGE BENITA Y. PEARSON
)	
)	CARMEN E. HENDERSON
)	UNITED STATES MAGISTRATE
)	JUDGE
)	
)	<u>ORDER</u>
)	

This matter was referred to the Honorable Carmen E. Henderson, United States Magistrate Judge, pursuant to 28 U.S.C. § 636 and Local Rules 72.1 and 72.2(a), for resolution of the parties' discovery disputes. *See* ECF No. 282.

A telephone conference was held on November 29, 2023, to discuss the referred discovery dispute. Present at the conference were:

Attorneys for Plaintiffs: Adam Gomez, Dena Young, Seth Katz (Plaintiff - Interim class counsel), Steven Nedina, Jo Anna Pollock, Jeff Goldenberg, Dennis Coftighan, Melanie Bailey, Vincent Carnevale, Michael O'Shea, Douglas Olcott

Attorneys for Defendant Norfolk Southern: Davina Pujari, Forrest Norman, Paul Roman, Andrew Davies, Scott Clements

Attorneys for Defendant Oxy Vinyls: Alicia Broyze, Kim Herlihy

Attorney for Defendant Trinity: John Byars

Attorney for Defendants GATX and General American:

Hariklia Karis

Prior to the referral, the parties were ordered to provide a joint document setting forth the details of the discovery dispute to the district court by 4:00 PM on November 28, 2023. Instead of submitting a joint letter, Defendant Norfolk Southern submitted a position letter moving the Court as follows:

First, [for] an order that, for upcoming Railcar Defendant depositions, including any Rule 30(b)(6) depositions of Railcar Defendants, Norfolk Southern and Plaintiffs will split their questioning time evenly, so that 2.5 hours are allocated to Norfolk Southern and 2.5 hours to Plaintiffs, rather than allocating 4 hours automatically to the party that first noticed the deposition.

Second, [for] an order compelling Plaintiffs to:

1. Produce environmental sampling data and non-privileged documents concerning environmental sampling and testing.
2. Execute medical and pharmacological releases for the period January 1, 2013 to date and identify all the healthcare providers and fulfilling pharmacies they have visited in that period.
3. Supplement their interrogatory responses to identify their physical locations since the February 3, 2023 derailment.
4. Provide supplemental interrogatory responses and produce financial and valuation information concerning Plaintiffs' properties and businesses, including appraisals and property tax assessments of real property; financial statements, balance sheets, and market valuations for businesses; and loan and financing information.
5. Confirm whether or not Gregory Swan remains a Named Plaintiff.

During the telephone conference, the Court resolved the first issue raised by ordering that for the upcoming Railcar Defendant depositions, including any Rule 30(b)(6) depositions of Railcar Defendants, Plaintiff will be allotted 4 hours to the Defendants' collective 4 hours, specifically, 1 hour each to 1) Norfolk Southern, 2) Oxy Vinyls, 3) Trinity, and 4) GATX and

General American. The Court reached this decision for the same reasons set forth by the District Court on September 28, 2023.

As for the second issue raised by Norfolk Southern, Plaintiffs requested that either the letter be stricken or that they be given until the end of the week to respond with their own position letter. Because Norfolk Southern blatantly ignored the District Court's request for a joint submission, the Court strikes Norfolk Southern's submission as it pertains to the second issue. Consequently, the parties shall submit a JOINT letter to the Court by emailing the submission to Magistrate Judge Henderson's Career Law Clerk and Court Room Deputy no later than 5:00 PM on Monday, December 4, 2023.¹ A follow up telephone conference will be scheduled after receipt of the joint submission.

IT IS SO ORDERED.

Dated: November 30, 2023

s/Carmen E. Henderson
Carmen E. Henderson
United States Magistrate Judge

¹ The Court will provide these email addresses separately.